

01.10.2021
Ct. No.8
S/L No.3
KS

(Via Video Conference)
W.P.A. 7821 of 2021
Sabita Roy & Anr.
-Vs.-
The State of West Bengal & Ors.

Mr. Samir Roychowdhury
.....For the Petitioners
Ms. Sipra Majumdar
Ms. Prativa Ghatak
.....For the State

Affidavit of service filed in Court be taken on record which shows that the service effected upon the State-respondents and State-respondent submits a report of the Officer-in-Charge, Ashokenagar, Police Station, Barasat Police District dated 30.08.2021. The report of the Officer-in-Charge, Ashokenagar Police Station submitted in Court be kept on record.

The petitioners' claim that the respondent nos.8 and 9 have cheated them by selling their property on the strength of Power of Attorney given to them and sold the same to the third party, but the consideration amount has not been paid to the petitioners. So, the petitioners filed an application under Section 156(3) of the Criminal Procedure Code and the Learned Magistrate by an order dated 26.02.2020 directed the Officer-in-Charge, Ashokenagar Police Station, North 24 Parganas to treat the complaint as an F.I.R.

The Learned Magistrate passed an order taking into consideration the offence alleged being cognizable offence under Sections 120B/ 420/ 34 of the Indian Penal Code. The report of the Officer-in-Charge reveals that on receipt of the complaint Ashokenagar Police Station case was lodged and the case has been endorsed to S.I. for investigation. During investigation the I.O. examined the complainant witnesses and recorded their statements under Section 161 of the Criminal Procedure Code and sent the notice under Section 41A of the Criminal Procedure Code to the F.I.R. named alleged persons. But, due to their absence, statements could not be taken I.O. also issued notice under Section 160 Cr.P.C. to the complainant to submit particulars of the witnesses agreement made between the petitioners and the private respondents, copy of the Power of the Attorney appointing the accused persons as Power of Attorney holder and any sale money receipt from the accused persons together with the full particulars of the disputed land. Thus, it reveals that the investigation is going on. It further reveals that the erstwhile I.O. S.I. Samir Kumar Mondal made over the case dockets and S.I. Arabinda Ghosh who has taken over the investigation. However, notice to the complainant under Section 160 of the Criminal Procedure Code has been given but the complainant has not turned up. The notice under Section 41 of the Criminal Procedure Code was also sent to the private respondents. But, it has been found that the original owner of the disputed land

is one, Haripada Dutta. On 05.06.2014 said Haripada Dutta shifted the Power of Attorney to Subrata Roy. On 09.09.2015 Subrata Roy sold the property to one Avijit Karmakar and Sabita Roy. On 13.10.2015 the said Avijit Karmakar and Sabita Roy shifted the Power of Attorney to one Monir Gazi of Ashokenagar and Saifuddin of Madhyamgram. On 30.12.2015 Sabita Roy and Avijit Karmakar sold the property to Saifuddin Hossain & Nachhima Bibi and for this Avijit Karmakar took a sum of Rs.19,50,000/- but, astonishingly it is found that on 08.09.2015 returned the Power of Attorney to the first owner, Haripada Dutta. During investigation, it is further revealed that step is going for making search from ADSR, Guma, Barasat for the detailed information in respect of the property in question and thus, the investigation is pending for verification of the other documents and examination. Therefore, it cannot be said that there is inaction on the part of the police authority in not taking action for the investigation in case of Ashokenagar Police Station case No.158/20.

Insofar as the prayer – (a) of the writ petition, such prayer cannot be entertained by a Writ Court as the lis between the private respondents and the petitioners and the dispute arising thereof is absolutely within the domain of the investigation into the police case by the Investigating Officer. However, I.O. is directed to complete the investigation within statutory period.

With the above observation and direction, the writ application being, W.P.A. 7821 of 2021 is disposed of.

All parties are to act on the server copy downloaded from the Official Website.

(Shivakant Prasad, J.)